

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MURRAY PAVING & RECLAMATION, INC.,

Plaintiff,

v.

INGERSOLL-RAND EQUIPMENT & SERVICES
COMPANY and INGERSOLL-RAND COMPANY,

Defendants.

CIVIL ACTION No. 04-10328 GAO

**DEFENDANT INGERSOLL-RAND COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, defendant Ingersoll-Rand Company ("Ingersoll-Rand") moves for summary judgment on all claims asserted against it by plaintiff Murray Paving & Reclamation, Inc. ("Murray").

This is a basic breach of warranty case in which the relief sought by plaintiff is expressly barred by the written warranties governing the product at issue. Plaintiff claims that a "paver" purchased from Ingersoll-Rand does not work, allegedly in breach of express and implied warranties. Despite the fact that Ingersoll-Rand has offered to repair the paver, plaintiff seeks a full refund of the sales price, consequential damages, and damages pursuant to M.G.L. ch. 93A. The terms of the paver's written warranties, however, expressly limit Ingersoll-Rand's liability to repair of the paver and disclaim all implied warranties and liability for consequential damages. For these reasons, and as explained more fully in the accompanying memorandum of law, this Court should enter summary judgment on behalf of Ingersoll-Rand on all counts of plaintiff's complaint.

WHEREFORE, Ingersoll-Rand respectfully requests that this Honorable Court grant its Motion for Summary Judgment as to all counts of plaintiff's Complaint and provide such other relief as justice may require.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Ingersoll-Rand requests a hearing on its Motion for Summary Judgment.

Respectfully submitted,

INGERSOLL-RAND COMPANY,

By its attorneys,

/s/ Carter D. Morse, Jr.
Jeffrey S. Follett (BBO No. 564337)
Carter D. Morse, Jr. (BBO No. 636645)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02110
(617) 832-1000

Date: November 30, 2004

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)

I hereby certify that counsel for Defendants have conferred with counsel for Plaintiff in good faith to resolve or narrow the areas of disagreement that are the subject of this motion and were unable to do so.

/s/ Carter D. Morse, Jr.
Carter D. Morse, Jr.

Certificate of Service

I certify that on November 30, 2004, I served the foregoing document on plaintiff by causing a copy of the same to be delivered by HAND DELIVERY to its counsel of record: Peter F. Davis, 15 Broad Street, Suite 512, Boston, Massachusetts 02109.

/s/ Carter D. Morse, Jr.
Carter D. Morse, Jr.